

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED  
December 28, 2010

In the Matter of LOPEZ, Minors.

No. 298547  
Ingham Circuit Court  
Family Division  
LC Nos. 08-002198-NA  
08-002199-NA

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In the Matter of LOPEZ, Minors.

No. 298594  
Ingham Circuit Court  
Family Division  
LC Nos. 08-002198-NA  
08-002199-NA

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Before: BECKERING, P.J., and TALBOT and OWENS, JJ.

PER CURIAM.

In these consolidated appeals, respondent parents appeal as of right the trial court's order terminating their parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence and that termination is in the best interests of the children.<sup>1</sup> MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). The trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341,

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<sup>1</sup> Petitioner is incorrect in its representation that "once a statutory ground under MCL 712A.19b(3) has been proven, the trial court is required to terminate respondent's parental rights unless it finds that termination of parental rights to the child is clearly not in the child's best interest." MCL 712A.19b(5) was amended, effective July 11, 2008. 2007 PA 199. The amended version now requires that the trial court order termination if "the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests."

356-357; 612 NW2d 407 (2000); *Sours*, 459 Mich at 633. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). “Regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.” MCR 2.613(C); *Miller*, 433 Mich at 337.

Termination of respondent-father’s parental rights was proper under MCL 712A.19b(3)(c)(i) and (g) because the conditions that led to the adjudication, primarily respondents’ longstanding substance abuse and inability to provide a proper home, continued to exist and because respondent-father was unable to provide proper care and custody of the children. Despite respondent-father’s assertion that he resolved the opiate dependency that caused the trial court to assert jurisdiction over the children, the record shows that his substance abuse was never addressed. He continued to test positive for benzodiazepines and cocaine throughout the time the children were in foster care. He tested positive for benzodiazepines 12 times, as recently as February 2010, and was diagnosed as opiate dependent. Respondent-father tested positive for cocaine on July 22, 2009, and November 25, 2009. He also missed 16 drug screens between September 13, 2009 and January 18, 2010, and forfeited parenting time with his children by failing to demonstrate that he could remain drug free.

Respondent-father argues that his lack of transportation and slow progress are not grounds for termination of his parental rights and that lack of parental fitness must also be demonstrated. Respondent-father’s parental unfitness is evident given his history of substance abuse and failure to complete his treatment plan. Respondent-father never participated in drug counseling or therapy to address the issues that led him to abuse substances. Likewise, he never participated in parenting classes or completed a psychological evaluation as required by his treatment plan. “A parent’s failure to comply with the parent-agency agreement is evidence of a parent’s failure to provide proper care and custody for the child.” *JK*, 468 Mich at 214. Moreover, respondent-father’s history of criminality and frequent arrests continued throughout the case. He was even in jail during the termination hearing. His continuing criminal activity further demonstrates his inability to provide proper care for his children and be available to them. Thus, termination of parental rights was proper under MCL 712A.19b(3)(c)(i) and (g).

Under MCL 712A.19b(3)(j), the children would be subject to risk of harm if returned to respondent-father’s care. Respondent-father’s use of benzodiazepines and cocaine would place the children at risk of harm by exposing them to an unsafe environment. These drugs interfere with his cognitive function and present a safety concern to the children, as demonstrated when respondent-father—with one of his young children in tow—passed out in a restaurant bathroom with an empty bottle of Xanax in his possession and required emergency transport to the hospital. Thus, termination of parental rights was proper under MCL 712A.19b(3)(j).

The trial court also did not err when it terminated respondent-mother’s parental rights under MCL 712A.19b(3)(c)(i) and (g) because, since before the adjudication, she has not demonstrated the ability to maintain a substance-free lifestyle. Respondent-mother argues that she is capable and willing to lead a sober life and care for her children. She argues that her substance abuse issues have stabilized and are no longer controlling her. However, there is no evidence to support this assertion. To the contrary, the evidence shows that respondent-mother had positive drug tests throughout the case. She tested positive for cocaine on November 1,

2009, and alcohol on January 13, 2010. She tested positive for benzodiazepines 25 times, most recently in February 2010, after having been diagnosed as opiate dependent. She also missed 15 drug screens between September 13, 2009, and January 29, 2010.

Moreover, respondent-mother has not demonstrated an ability to properly care for her children. She has not demonstrated the capacity to provide the children with food, clothing, or medical care. She was arrested two times in December 2009. Although she recently made some improvements in her life, she never came into complete compliance with her treatment plan. For example, she moved out of respondent-father's home and began living with her mother and stepfather whose residence does not meet foster care licensing requirements. She has not demonstrated an ability to maintain employment, and while she asserts that she has found work, she was not scheduled to begin her new job until the week after the termination hearing. Moreover, respondent-mother attended only four therapy sessions. Thus, termination of respondent-mother's parental rights was proper under MCL 712A.19b(c)(i) and (g).

Under MCL 712A.19b(3)(j), given respondent-mother's extensive history of substance abuse, the children will likely be at risk of harm if returned to her care. Respondent-mother has not addressed her substance abuse and has not demonstrated the ability to safely parent her children. The life changes she claims to have made came too late, and she has not demonstrated an ability to remain drug free for any extended period of time. Thus, termination of parental rights was proper under MCL 712A.19b(3)(j).

Respondents both argue that the trial court erred in its best interests determination. Given respondents' extensive history of drug use, they were unable to provide the children with a safe home environment. Also, neither of the respondents demonstrated that they had the parenting skills necessary to properly care for the children. It is in the children's best interests to be raised by caregivers who can provide them with a stable, safe home without exposure to drugs. "If a parent cannot or will not meet [his or] her irreducible minimum parental responsibilities, the needs of the child must prevail over the needs of the parent." *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000) (quotation marks and citation omitted).

Moreover, there is no evidence of a bond between respondents and the children. Precipitated by respondents' inability or unwillingness to go seven days with clean drops and compliance with urine drug screens, respondents have not visited the children since October 2009. The oldest child expressed anger with his parents for the choices they have made, and eventually stopped inquiring about them. Thus, the trial court did not clearly err in its best interests determination.

Affirmed.

/s/ Jane M. Beckering  
/s/ Michael J. Talbot  
/s/ Donald S. Owens